

## The Honorable James L. Robart

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MAY 22 2023

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DY DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
ERIKA A. BOCELLE,  
Defendant.

NO. CR22-127JLR

## **PLEA AGREEMENT**

The United States, through United States Attorney Nicholas W. Brown and Assistant United States Attorney Vincent T. Lombardi of the Western District of Washington and defendant ERIKA A. BOCELLE and her attorney Zachary Walker Jarvis enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11.

1.     **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charge contained in the Indictment: *Conspiracy to Distribute Controlled*

1     Substances, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C)  
 2 and 846, the lesser-included offense charged in Count 1 of the Indictment

3                 By entering this plea of guilty, Defendant hereby waives all objections to the form  
 4 of the charging document. Defendant further understands that before entering any guilty  
 5 plea, Defendant will be placed under oath. Any statement given by Defendant under oath  
 6 may be used by the United States in a prosecution for perjury or false statement.

7                 2.     **Elements of the Offenses.** The elements of the offense of *Conspiracy to*  
 8 *Distribute Controlled Substances*, as charged in Count 1 of the Indictment are as follows:

9                     *First*, there was an agreement between two or more persons to distribute  
 10 controlled substances, specifically methamphetamine and fentanyl;  
 11                     *Second*, Defendant joined in the agreement, knowing of at least one of its  
 12 objects, and intending to help accomplish it.

13                 3.     **The Penalties.** Defendant understands that the statutory penalties  
 14 applicable to the offense of *Conspiracy to Distribute Controlled Substances*, the lesser  
 15 included offense to the one charged in Count 1 of the Indictment are as follows: A  
 16 maximum term of imprisonment of up to twenty (20) years; a fine of up to \$1 million; a  
 17 period of supervision following release from prison of at least three (3) years; and a  
 18 mandatory special assessment of \$100 dollars.

19                 Defendant understands that supervised release is a period of time following  
 20 imprisonment during which Defendant will be subject to certain restrictive conditions and  
 21 requirements. Defendant further understands that, if supervised release is imposed and  
 22 Defendant violates one or more of the conditions or requirements, Defendant could be  
 23 returned to prison for all or part of the term of supervised release that was originally  
 24 imposed. This could result in Defendant serving a total term of imprisonment greater  
 25 than the statutory maximum stated above.

1       Defendant understands that as a part of any sentence, in addition to any term of  
2 imprisonment and/or fine that is imposed, the Court may order Defendant to pay  
3 restitution to any victim of the offense, as required by law.

4       Defendant further understands that the consequences of pleading guilty may  
5 include the forfeiture of certain property, either as a part of the sentence imposed by the  
6 Court, or as a result of civil judicial or administrative process.

7       Defendant agrees that any monetary penalty the Court imposes, including the  
8 special assessment, fine, costs, or restitution, is due and payable immediately and further  
9 agrees to submit a completed Financial Disclosure Statement as requested by the United  
10 States Attorney's Office.

11      Defendant understands that, if pleading guilty to a felony drug offense, Defendant  
12 will become ineligible for certain food stamp and Social Security benefits as directed by  
13 Title 21, United States Code, Section 862a.

14      **4. Immigration Consequences.** Defendant recognizes that pleading guilty  
15 may have consequences with respect to Defendant's immigration status if Defendant is  
16 not a citizen of the United States. Under federal law, a broad range of crimes are grounds  
17 for removal, and some offenses make removal from the United States presumptively  
18 mandatory. Removal and other immigration consequences are the subject of a separate  
19 proceeding, and Defendant understands that no one, including Defendant's attorney and  
20 the Court, can predict with certainty the effect of a guilty plea on immigration status.  
21 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any  
22 immigration consequences that Defendant's guilty plea(s) may entail, even if the  
23 consequence is Defendant's mandatory removal from the United States.

24      **5. Rights Waived by Pleading Guilty.** Defendant understands that by  
25 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

26           a.     The right to plead not guilty and to persist in a plea of not guilty;

- 1                   b.     The right to a speedy and public trial before a jury of Defendant's  
2 peers;  
3                   c.     The right to the effective assistance of counsel at trial, including, if  
4 Defendant could not afford an attorney, the right to have the Court appoint one for  
5 Defendant;  
6                   d.     The right to be presumed innocent until guilt has been established  
7 beyond a reasonable doubt at trial;  
8                   e.     The right to confront and cross-examine witnesses against Defendant  
9 at trial;  
10                  f.     The right to compel or subpoena witnesses to appear on Defendant's  
11 behalf at trial;  
12                  g.     The right to testify or to remain silent at trial, at which trial such  
13 silence could not be used against Defendant; and  
14                  h.     The right to appeal a finding of guilt or any pretrial rulings.

15         6. **United States Sentencing Guidelines.** Defendant understands and  
16 acknowledges that the Court must consider the sentencing range calculated under the  
17 United States Sentencing Guidelines and possible departures under the Sentencing  
18 Guidelines together with the other factors set forth in Title 18, United States Code,  
19 Section 3553(a), including: (1) the nature and circumstances of the offense(s); (2) the  
20 history and characteristics of Defendant; (3) the need for the sentence to reflect the  
21 seriousness of the offense(s), to promote respect for the law, and to provide just  
22 punishment for the offense(s); (4) the need for the sentence to afford adequate deterrence  
23 to criminal conduct; (5) the need for the sentence to protect the public from further  
24 crimes of Defendant; (6) the need to provide Defendant with educational and vocational  
25 training, medical care, or other correctional treatment in the most effective manner; (7)  
26 the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the  
27 need to avoid unwarranted sentence disparity among defendants involved in similar

1 conduct who have similar records. Accordingly, Defendant understands and  
2 acknowledges that:

3           a.       The Court will determine Defendant's Sentencing Guidelines range  
4 at the time of sentencing;

5           b.       After consideration of the Sentencing Guidelines and the factors in  
6 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the  
7 maximum term authorized by law;

8           c.       The Court is not bound by any recommendation regarding the  
9 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
10 range offered by the parties or the United States Probation Department, or by any  
11 stipulations or agreements between the parties in this Plea Agreement; and

12           d.       Defendant may not withdraw a guilty plea solely because of the  
13 sentence imposed by the Court.

14       7.       **Ultimate Sentence.** Defendant acknowledges that no one has promised or  
15 guaranteed what sentence the Court will impose.

16       8.       **Statement of Facts.** The parties agree on the following facts. Defendant  
17 admits Defendant is guilty of the charged offense.

18       Defendant Erika A. Bocelle admits she entered into an agreement with co-  
19 defendant John Michael Sherwood and others known and unknown to distribute  
20 controlled substances in the Spring of 2021. Without limiting the foregoing, Defendant  
21 admits as follows:

22       Defendant admits that she met Sherwood sometime late 2020 or early 2021, when  
23 both were living in the Massachusetts/Rhode Island area. Defendant admits that she  
24 began selling small amounts of drugs, primarily cocaine, to Sherwood that he in turn  
25 supplied to others. Defendant further admits that Sherwood began supplying her with  
26 ounce quantities of methamphetamine shortly thereafter.

1       Sometime in the Spring of 2021, Defendant admits that Sherwood recruited her to  
 2 travel to California with him to transport drugs. Defendant originally declined, and then  
 3 finally agreed to fly out to Washington state and assist Defendant in moving drugs  
 4 instead.

5       Defendant admits that on or about April 4, 2021, she flew from the Boston area to  
 6 the SeaTac airport in the Western District of Washington. Defendant ultimately met up  
 7 with Sherwood a day or so later near SeaTac.

8       Sherwood told her that he had already attempted to move large amounts of drugs  
 9 by water to Canada before she arrived. Sherwood further told Defendant that the plan  
 10 was for Sherwood to meet a Canadian co-conspirator half-way across the strait between  
 11 the U.S. and Canada to transfer the drugs, but that the boat or raft he was using flipped or  
 12 sank. Sherwood told Defendant he ultimately dragged at least some of the duffle bags  
 13 containing the drugs out of the water and stashed them under a bridge.

14       Upon Sherwood's and Defendant's arrival back in the Port Angeles, Washington  
 15 area, Defendant admits she obtained a room at the Riviera Inn room in Port Angeles,  
 16 where Sherwood was already staying, that Sherwood paid for.

17       Sherwood then drove Defendant, in a rented U-Haul vehicle, to a beach near Port  
 18 Angeles to show her where he had attempted to smuggle the drugs across the Juan de  
 19 Fuca Strait. He also took Defendant to a storage unit in the Port Angeles area and  
 20 showed her a number of damp duffle bags that smelled of methamphetamine. Sherwood  
 21 opened a bag and showed her the contents, which Defendant recognized to be  
 22 methamphetamine.

23       Defendant admits that law enforcement recovered at least some of the bags  
 24 Sherwood tried to smuggle across the waterway. Subsequent testing by the DEA Lab  
 25 showed that the bags contained 140.25 net kilograms of actual methamphetamine, and  
 26 995.8 net grams of powder fentanyl.

1 During Defendant's time in Port Angeles with Sherwood, Defendant admits that  
 2 she overheard Sherwood speak on the phone with someone Sherwood addressed with the  
 3 name "Kevin." Sherwood appeared to be explaining the situation with the aborted  
 4 smuggling attempt to this person, and asked "Kevin" for more money. Defendant also  
 5 understood Sherwood to be taking pictures of the area that were intended to be sent to  
 6 "Kevin" to further explain what happened. At one point, Sherwood asked Defendant to  
 7 pick up money wired by "Kevin" to Sherwood because Sherwood lacked a valid  
 8 identification document.

9 Defendant decided to leave Sherwood and go back to Rhode Island, and offered to  
 10 return the rented U-Haul van, which was by then overdue to be returned. Defendant then  
 11 drove the U-Haul eastbound and returned the van, meeting up with another individual  
 12 who helped her drive the rest of the way back.

13 The parties agree that the Court may consider additional facts contained in the  
 14 Presentence Report (subject to standard objections by the parties) and/or that may be  
 15 presented by the United States or Defendant at the time of sentencing, and that the factual  
 16 statement contained herein is not intended to limit the facts that the parties may present to  
 17 the Court at the time of sentencing.

18       **9. Sentencing Factors.** The parties agree that the following Sentencing  
 19 Guidelines provisions apply to this case:

20           a.     A base offense level of 38 because the offense involved more than  
 21 4.5 kilograms of actual methamphetamine, pursuant to USSG § 2D1.1(c)(1);

22           b.     Two-level decrease because Defendant played a minor role in the  
 23 offense conduct, pursuant to USSG § 3B1.2(b);

24           c.     A further 4-level decrease in the base offense level pursuant to  
 25 USSG § 2D1.1(a)(5) due to Defendant's minor role;

26           d.     A 3-level decrease if Defendant continues to fully accept  
 27 responsibility pursuant to Paragraph 10 of this Plea Agreement.

1       The parties agree they are free to present arguments regarding the applicability of  
 2 all other provisions of the United States Sentencing Guidelines. Defendant understands,  
 3 however, that at the time of sentencing, the Court is free to reject these stipulated  
 4 adjustments, and is further free to apply additional downward or upward adjustments in  
 5 determining Defendant's Sentencing Guidelines range.

6       **10. Acceptance of Responsibility.** At sentencing, if the Court concludes  
 7 Defendant qualifies for a downward adjustment for acceptance of responsibility pursuant  
 8 to USSG § 3E1.1(a) and Defendant's offense level is 16 or greater, the United States will  
 9 make the motion necessary to permit the Court to decrease the total offense level by three  
 10 (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the  
 11 United States by timely notifying the United States of Defendant's intention to plead  
 12 guilty, thereby permitting the United States to avoid preparing for trial and permitting the  
 13 Court to allocate its resources efficiently.

14       < b>11. Forfeiture of Assets. Defendant understands the forfeiture of property is  
 15 part of the sentence that must be imposed in this case. Defendant agrees to forfeit to the  
 16 United States immediately Defendant's right, title, and interest in any and all property,  
 17 real or personal, that was used, or intended to be used, in any manner or part, to commit,  
 18 or to facilitate the commission of *Conspiracy to Distribute Controlled Substances*, the  
 19 lesser-included offense of that charged in Count 1 of the Indictment, and any property  
 20 constituting, or derived from, any proceeds Defendant obtained, directly or indirectly, as  
 21 the result of this offense. This property is subject to forfeiture pursuant to Title 21, United  
 22 States Code, Section 853(a).

23       Defendant agrees to fully assist the United States in the forfeiture of the above-  
 24 described property and to take whatever steps are necessary to pass clear title to the  
 25 United States, including but not limited to: surrendering title and executing any  
 26 documents necessary to effect forfeiture; assisting in bringing any property located  
 27 outside the United States within the jurisdiction of the United States; and taking whatever

1 steps are necessary to ensure that property subject to forfeiture is not sold, disbursed,  
2 wasted, hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to file  
3 a claim to any such property in any federal forfeiture proceeding, administrative or  
4 judicial, which may be or has been initiated. Defendant also agrees she will not assist any  
5 party who may file a claim to this property in any federal forfeiture proceeding.

6                 The United States reserves its right to proceed against any remaining  
7 property not identified in this Plea Agreement, including any property in which  
8 Defendant has any interest or control, if said assets constitute or are derived from  
9 proceeds of, or were used or intended to be used to facilitate, *Conspiracy to Distribute*  
10 *Controlled Substances*, the lesser-included offense of that charged in Count 1 of the  
11 Indictment.

12                 **12. Abandonment of Contraband.** Defendant also agrees that, if any federal  
13 law enforcement agency seized any illegal contraband that was in Defendant's direct or  
14 indirect control, Defendant consents to the federal administrative disposition, official use,  
15 and/or destruction of that contraband.

16                 **13. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
17 the United States Attorney's Office for the Western District of Washington agrees not to  
18 prosecute Defendant for any additional offenses known to it as of the time of this Plea  
19 Agreement based upon evidence in its possession at this time, and that arise out of the  
20 conduct giving rise to this investigation, to move to dismiss the remaining count in the  
21 Indictment at the time of sentencing. In this regard, Defendant recognizes the United  
22 States has agreed not to prosecute all of the criminal charges the evidence establishes  
23 were committed by Defendant solely because of the promises made by Defendant in this  
24 Plea Agreement. Defendant agrees, however, that for purposes of preparing the  
25 Presentence Report, the United States Attorney's Office will provide the United States  
26 Probation Office with evidence of all conduct committed by Defendant.  
27

1       Defendant agrees that any charges to be dismissed before or at the time of  
2 sentencing were substantially justified in light of the evidence available to the United  
3 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant  
4 with a basis for any future claims under the “Hyde Amendment,” Pub. L. No. 105-119  
5 (1997).

6       **14. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if  
7 Defendant breaches this Plea Agreement: (a) the United States may withdraw from this  
8 Plea Agreement and Defendant may be prosecuted for all offenses for which the United  
9 States has evidence; (b) Defendant will not oppose any steps taken by the United States  
10 to nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea  
11 Agreement; and (c) Defendant waives any objection to the re-institution of any charges  
12 that previously were dismissed or any additional charges that had not been prosecuted.

13       Defendant further understands that if, after the date of this Plea Agreement,  
14 Defendant should engage in illegal conduct, or conduct that violates any conditions of  
15 release or the conditions of confinement (examples of which include, but are not limited  
16 to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
17 pending sentencing, and false statements to law enforcement agents, the Pretrial Services  
18 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement  
19 to file additional charges against Defendant or to seek a sentence that takes such conduct  
20 into consideration by requesting the Court to apply additional adjustments or  
21 enhancements in its Sentencing Guidelines calculations in order to increase the applicable  
22 advisory Guidelines range, and/or by seeking an upward departure or variance from the  
23 calculated advisory Guidelines range. Under these circumstances, the United States is  
24 free to seek such adjustments, enhancements, departures, and/or variances even if  
25 otherwise precluded by the terms of the Plea Agreement.

26       **15. Waiver of Appellate Rights and Rights to Collateral Attacks.**

27       Defendant acknowledges that, by entering the guilty plea(s) required by this Plea

1 Agreement, Defendant waives all rights to appeal from Defendant's conviction, and any  
2 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the  
3 judgment of conviction. Defendant further agrees that, provided the Court imposes a  
4 custodial sentence that is within or below the Sentencing Guidelines range (or the  
5 statutory mandatory minimum, if greater than the Guidelines range) as determined by the  
6 Court at the time of sentencing, Defendant waives to the full extent of the law:

7           a. Any right conferred by Title 18, United States Code, Section 3742,  
8 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,  
9 restitution order, probation or supervised release conditions, or forfeiture order (if  
10 applicable); and

11           b. Any right to bring a collateral attack against the conviction and  
12 sentence, including any restitution order imposed, except as it may relate to the  
13 effectiveness of legal representation.

14         This waiver does not preclude Defendant from bringing an appropriate motion  
15 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or  
16 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

17         If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
18 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
19 any way, the United States may prosecute Defendant for any counts, including those with  
20 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
21 Agreement.

22         16. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into  
23 this Plea Agreement freely and voluntarily, and that no threats or promises were made to  
24 induce Defendant to enter a plea of guilty other than the promises contained in this Plea  
25 Agreement or set forth on the record at the change of plea hearing in this matter.

26         17. **Statute of Limitations.** In the event this Plea Agreement is not accepted  
27 by the Court for any reason, or Defendant breaches any of the terms of this Plea

1 Agreement, the statute of limitations shall be deemed to have been tolled from the date of  
2 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the  
3 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach  
4 of the Plea Agreement by Defendant is discovered by the United States Attorney's  
5 Office.

6       **18. Completeness of Plea Agreement.** The United States and Defendant  
7 acknowledge that these terms constitute the entire Plea Agreement between the parties,  
8 except as may be set forth on the record at the change of plea hearing in this matter. This  
9 Plea Agreement binds only the United States Attorney's Office for the Western District  
10 of Washington. It does not bind any other United States Attorney's Office or any other  
11 office or agency of the United States, or any state or local prosecutor.

Dated this 22<sup>nd</sup> day of May, 2023.

Erika Bocelle  
ERIKA A. BOCELLE  
Defendant

ZACHARY WALKER JARVIS  
Attorney for Defendant

VINCENT T. LOMBARDI  
Assistant United States Attorney